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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/864,374	05/25/2001	Yutaka Takahashi	33082M083	1607

7590 06/26/2003

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EXAMINER

LUND, JEFFRIE ROBERT

ART UNIT	PAPER NUMBER
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1763

DATE MAILED: 06/26/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

FILE COPY

Office Action Summary

Application No.

09/864,374

Applicant(s)

TAKAHASHI ET AL

Examiner

Jeffrie R. Lund

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 and 18-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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supplying unit is an intended use of the apparatus and it would be obvious to supply the desired gas to the heater to perform the desired process on the substrate.

6. Claims 13-17 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of copending Application No. 10/10/342,261. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of application '261 differ from the present invention in only minor and obvious ways.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(f) he did not himself invent the subject matter sought to be patented.

8. Claims 13-17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Homma et al, US Patent 5,777,300.

Homma et al teaches the claimed invention in the figures and throughout the specification. The examiner notes that figure 13 teaches all the claimed gases; any of the other apparatus shown in the other figures are inherently capable of supplying any desired gas to the reaction chamber.

9. Claims 13-17 are rejected under 35 U.S.C. 102(f) because the applicant did not invent the claimed subject matter. Asano et al (US Patent 6,540,509 B2 or Patent

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Application Publication 2003/0106495 A1) teach the claimed system in figure 9 and supported in the specification.

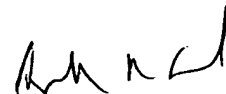
Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited art teaches the technological background of the invention. The cited art contains patents that could be used to reject the claims under 35 USC § 102 or 103. These rejections have not been made because they do not provide any additional or different teachings, and if they were applied, would have resulted in an undue multiplication of references. (See MPEP 707.07(g))

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrie R. Lund whose telephone number is (703) 308-1796. The examiner can normally be reached on Monday-Thursday (6:30 am-6:00pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Mills can be reached on (703) 308-1633. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeffrie R. Lund
Primary Examiner
Art Unit 1763

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group IV, claims 13-17 in Paper No. 7, filed June 10, 2003 is acknowledged. The traversal is on the ground(s) that the claims from Group II, IV, and VI all involve film forming systems and the search for one is inextricably intertwined with the searches of the others, and thus there is no burden. This is not found persuasive because although the inventions are all film forming systems, it is the number and type of elements claimed that make the claims burdensome. All three groups have different inventive elements (Group II requires a controller, Group IV requires a specific gas heater, Group VI requires a multiple gas feed pipe system) that require different searches. While some of the basic elements share a common search, none of the inventive elements discussed above, share a common search. Therefore, the groups require different searches. Furthermore, the claims require different art to be used to reject the claims of the different groups (i.e. the rejections made in the present action could not be used in the other groups).

The requirement is still deemed proper and is therefore made FINAL.

Specification

2. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

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Drawings

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 131(page 24 line 23). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 13-17 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-12 of U.S. Patent No.

6,540,509 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present invention differs from '509 in only minor and obvious ways. For example, '509 does not claim specific gases supplied in the gas supplying unit, while the present invention does. The specific gas supplied in the gas